

## **REMARKS**

Applicant is in receipt of the Office Action of July 14, 2006. Claims 1 – 29 were rejected. Claims 5 – 8 and 19 – 23 have been amended. Claims 1 – 29 remain pending in the application.

Claims 14 – 29 were indicated as being allowable. Applicant thanks the Examiner for consideration of these claims.

Applicant has amended claims 5 – 8 and 19 – 23 to recite, in pertinent part, computer-readable storage media. Support for the amendments to claims 5 – 8 and 19 – 23 may be found in the specification at least at paragraph 0080 (page 26, lines 4 – 12).

### **Section 102 Rejections**

Claims 1 – 13 were rejected under 35 U.S.C. §102(e) as being anticipated by Fraenkel et al. (U.S. Patent No. 6,738,933, hereinafter “Fraenkel”). Applicant respectfully traverses the rejections in light of the following remarks.

Anticipation under §102(e) requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). The identical invention must be shown in as complete detail as is contained in the claims. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). As discussed below, Fraenkel fails to disclose each and every element of the claimed invention.

Applicant’s claim 1 recites:

1. A method for performing a plurality of performance management tasks in a performance management system, the method comprising:

detecting a performance problem in a computer system, wherein the computer system comprises one or more application tiers and a plurality of system components;  
identifying a root cause of the performance problem in a particular application tier or particular system component of the one or more application tiers and plurality of system components;  
improving the performance of the computer system by implementing a solution to the root cause of the performance problem in the particular application tier or particular system component; and  
verifying that the solution to the root cause of the performance problem has improved the performance problem.

Applicant respectfully submits that Fraenkel does not teach or suggest a method comprising “verifying that the solution to the root cause of the performance problem has improved the performance problem.” Fraenkel discloses automatically analyzing performance data to determine root causes of performance degradation (e.g., col. 4, line 63 to col. 5, line 38). Fraenkel also discloses corrective actions for the performance degradation (e.g., col. 45, line 66 to col. 46, line 22). However, there is no teaching or suggestion in Fraenkel for verifying that the solution to the root cause of the performance problem has improved the performance problem. Applicant notes that the Office Action does not discuss this element of Applicant’s claims, and Applicant requests that the Examiner specifically indicate any disclosure of this element in Fraenkel if the rejection is maintained.

For at least the reasons discussed above, Applicant respectfully submits that independent claims 1, 5, 9, and 13 are patentably distinct from Fraenkel. As the independent claims have been shown to be patentably distinct, additional discussion of the dependent claims is not necessary at this time. Applicant submits that claims 1 – 29 are in condition for allowance and respectfully requests withdrawal of the §102(e) rejection.

## CONCLUSION

In light of the foregoing amendments and remarks, Applicants submit that all pending claims are now in condition for allowance, and an early notice to that effect is earnestly solicited. If a phone interview would speed allowance of any pending claims, such is requested at the Examiner's convenience.

The Commissioner is authorized to charge any fees which may be required, or credit any overpayment, to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 50-1505/5760-14400/BNK.

Also enclosed herewith are the following items:

☒ Return Receipt Postcard

Respectfully submitted,



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